

## Internal Revenue Service

## Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 - PLR-118071-02

Date:

June 21, 2002

Bank =

Court =

State A =

State B =

Trust I =

Trust II =

A =

B =

C =

D1 =

Dear :

This letter responds to a letter dated March 8, 2002, submitted by the authorized representative of A's estate, in which rulings are requested relating to a charitable remainder unitrust.

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B, the vice-president of Bank, represents the following in B's capacity as guardian of A's estate. A is an individual who has been adjudicated as an incapacitated person by the courts in both State A and State B. State A appointed Bank as guardian of A's estate. Bank is currently acting in two fiduciary capacities with respect to A. First, as guardian of A's estate, and second, as trustee of a separate trust created for A's benefit (Trust I).

Trust I was created by decree of Court dated D1 and funded with assets from A's estate. It is represented that Trust I is treated as owned entirely by A under §§ 671 through 677. Trust I was intended to protect A's assets and ensure that they were used for A's benefit. Article Fourth paragraph A of Trust I provides that Trust I's income shall be paid to C, as guardian of A's person, for the benefit of A according to a Court approved budget. Additionally, C may request additional payments for the benefit of A upon Court's approval. Article Fourth paragraph B provides that upon A's death, Trust I's assets are payable to A's estate.

As part of A's Court approved estate planning, Bank, as guardian of A's estate, plans to establish Trust II which is intended to qualify as a charitable remainder unitrust described in § 664(d)(2). Subject to Court's approval, funds from Trust I will be distributed to A's estate, followed by a contribution of the funds from A's estate to Trust II. Bank will be the trustee of Trust II. Trust II will provide annual unitrust payments to Trust I during A's life. Upon A's death, the remainder will pass to a specified charitable organization if it qualifies as an organization described in §§ 170(c), 2055(a), and 2522(a), or if it does not so qualify, to another specified charitable organization, or if the second organization does not so qualify, to an organization described in §§ 170(c), 2055(a), and 2522(a) of the trustee's choice.

Bank, as guardian of A's estate, represents that Trust II's provisions incorporate or follow closely the sample one-life charitable remainder unitrust provisions in § 4 of Rev. Proc. 89-20, 1989-1 C.B. 841, and is not requesting a ruling on those provisions. However, Bank has noted that Trust II contains provisions which differ from the model language in Rev. Proc. 89-20 in that the unitrust distributions are not paid directly to a named beneficiary but to Trust I established for the beneficiary's benefit.

Section 664(d)(2) sets forth the requirements to be a charitable remainder trust. Section 664(d)(2)(A) provides that a fixed percentage (which is not less than 5 percent nor more than 50 percent) of the net fair market value of its assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of whom is not an organization described in § 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals.

Section 1.664-3(a)(3)(i) of the Income Tax Regulations provides that the unitrust amount must be payable to or for the use of a named person or persons.

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As defined in § 7701(a)(1), “person” includes an individual, a trust, estate, partnership, association, company or corporation.

Section 1.664-3(a)(5)(i) provides, however, that only an individual or an organization described in § 170(c) may receive an amount for the life of an individual.

Revenue Ruling 2002-20, 2002-17 I.R.B. 794, holds that a trust may qualify as a charitable remainder unitrust under § 664 if the unitrust amounts will be paid for the life of a financially disabled individual to a separate trust that will administer these payments on behalf of that individual and, upon the individual's death, will distribute the remaining assets either to the individual's estate or, after reimbursing the state for any Medicaid benefits provided to the individual, subject to the individual's general power of appointment.

Section 170 allows a deduction for any charitable contribution to an organization described in § 170(c), payment of which is made within the taxable year. Section 1.170A-1(c)(1) of the Income Tax Regulations provides that if a charitable contribution is made in property other than money, the amount of the contribution is the fair market value of the property at the time of the contribution, reduced as provided in § 170(e)(1) and § 1.170A-4(a).

Section 170(f)(2)(A) provides that no deduction is allowed under § 170 for the value of a remainder interest transferred in trust unless the trust is a charitable remainder unitrust or charitable remainder annuity trust described in § 664 (or a pooled income fund described in § 642(c)(5)).

Therefore, based on the information submitted and the representations set forth above, we conclude that Trust II will not fail to qualify as charitable remainder unitrust, pursuant to § 664 as a result of the unitrust distributions to Trust I for the life of A. Additionally, if the proposed trust qualifies as a charitable remainder unitrust under § 664, we conclude that A will be entitled to an income tax deduction under § 170 upon the transfer of property to the charitable remainder unitrust. The amount of the charitable contribution deduction will be determined under § 170 and the regulations thereunder.

Except as specifically set forth above, no opinion is expressed as to the federal tax consequences of the formation or operation of Trust I and Trust II under the provisions of any other section of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being forwarded to Bank, as guardian of A's estate.

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Sincerely yours,  
J. THOMAS HINES  
Chief, Branch 2  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures: 2  
Copy of this letter  
Copy for § 6110 purposes

cc: